

UNIFORM CIVIL CODE: AN UNTOUCHED PROVISION OF CONSTITUTION

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The Constitution makers of India aimed at making India a secular nation, secure all its citizens social, economic and political justice; provide them with the liberty to have their own thought, expression, belief, faith and worship; and equality of status and opportunity. They even embraced the idea of bringing in the concept of Uniform Civil Code as a fundamental right in the Indian Constitution, but it ended up as a provision under Part IV which deals with the Directive Principles of State Policy. Article forty-four of the Indian Constitution deals with Uniform Civil Code and states that "the state shall endeavour to enact a Uniform Civil Code throughout the country". Since 1950, this provision has been gathering dust as no government at the centre or any state (except in the case of Goa) has initiated to take a step further in order to get this civil code enacted.

The common civil code, if enacted, will deal with personal laws of all the religions practiced in India relating to marriage, divorce, adoption, succession, inheritance etc which are all secular in nature. It will help the judiciary of the country to treat every single citizen at par and provide each one of them the dignity they deserve, which is denied by personal law. It is not for the sake of the protection of the minority communities or to portray the unity of a diverse country but, a simple reason behind adopting this provision is to provide people equal rights and to bring all under one umbrella of judiciary. If we can provide justice to all through one legislation, what is the necessity to bring in multiple law for providing the same justice?

Although, the adoption of Uniform Civil Code in India would be a step ahead in the overall cultural and social development of the nation, the people are not ready to accept it. The foremost reason for this is that people of the country are unaware of what this provision basically deals with. People have a notion that the acceptance of Uniform Civil Code would mean the rejection of the customs and practices of their specific religion that they have been following since ages. People are unaware about the features of common civil code and the advantages that it would provide to the people. For a law to be accepted in the society, it is important for it to be socially rooted. Here lies are second reason. India has been following

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different laws for governing Hindus and Muslims since the time of British rule. British administrators did not want to incorporate a single legislation as they feared a mass agitation from the different communities residing in India. They found it safer to stay away from matters which did not concern their administration, that is, areas except for taxation, contracts, and other civil matters. They did not find it feasible to interfere in the family affairs of the people of the colonised India. The third reason is the influence of paternalistic approach towards the society of India. The personal law, especially the Mohammadan law, is in favour of men. The concept of triple talaq and polygamy are few of the examples of customs practiced under Mohammadan law, which favours men and exploits the rights and dignity of Muslim women. India being a paternalistic society influences people not to accept Uniform Civil Code as it provides women with certain rights, equal status as men and empowers them so that they could fight for the right cause and seek justice.

The honourable Courts of India, in many cases, have advised the Parliament to frame a Uniform Civil Code but we see no measures taken by the Parliament in order to enact the provision of common Civil Code. No government, who came into power, took the gambit of making people aware or took any step towards formulation of Uniform Civil Code as they have always aimed at short term benefits and vote-bank politics by creating communalism and have ignored the long term growth of the nation.

Justice Y. V. Chandrachud, in the landmark **Ahmed Khan v. Shah Bano Begum**² Case, made an observation that “Article 44 of our Constitution has remained a dead letter. There is no evidence of any official activity for framing a common civil code for the country. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. It is the state which is in charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably, it has the legislative competence to do so. A beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of Courts to brigade the gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case”.

² 1985 AIR 945

In the year 2003, in **John Vallamattan v Union of India**³, Chief Justice Khare commented, *"We would like to State that Article 44 provides that the State shall endeavour to secure for all citizens a uniform civil code throughout the territory of India...It is a matter of great regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies"*.

Although we observe that the judiciary of India is ready to accept Uniform Civil Code, the different communities and their Law Boards are opposing the views of the Indian Courts. The All India Muslim Personal Law Board (AIMPLB) rejected the observations made by Supreme Court on the implementation of Uniform Civil Code, as they are of the view that such a law can never be imposed on any particular religion as it takes away the rights of the people to practice their religion. Contrary to this, Islamic countries such as Iran, Morocco, Syria, Pakistan, etc have codified the personal law and in some of these countries, the practice of triple talaq and polygamy has been prohibited.

Few major pieces of Hindu personal law has been codified:

- Hindu Marriage Act (1955)
- Hindu Succession Act (1956)
- Hindu Minority and Guardianship Act (1956)
- Hindu Adoptions and Maintenance Act (1956)

This provides the people of Hindu community proper justice, certain rights and equality between men and women in matters relating to family law.

Even though we see codification of few personal laws in Hindu community, the laws of Muslims, Parsis etc are not yet codified.

In **Sarla Mudgal v Union of India**⁴, Justice Kuldeep Singh commented that *"Where more than eighty percent of the citizens have already been brought under the codified personal law, there is no justification whatsoever to keep in abeyance, any more, the introduction of the uniform civil code for all the citizens in the territory of India"*.

³ AIR 2003 SC 2902

⁴ AIR 1995 SC 1531

He stated that *"The rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments – which have come and gone – have so far failed to make any effort towards ‘unified personal law for all Indians’"*

The reason behind not incorporating Uniform Civil Code as a fundamental right during the time of the formation of Constitution was the condition of the Hindu and Muslim relationship. Communism was on its peak and India had suffered a partition. It was not reasonable enough to create kiosk and develop more agitation between the two major communities of the country. According to Jawaharlal Nehru, Uniform Civil Code was a necessity for India but at that point of time, India was not ready and stable enough to adopt this provision.

But, their lies absolutely no reason, for Indian government to not take any further steps now. It is a necessity for India to adopt Uniform Civil Code for providing its people better judicial system, which covers all the aspects and concerns of the citizens. As we have observed that Indian society is not ready to incorporate this provision, one way to introduce common Civil Code is through the strategy of 'optional code'. A common code can be framed and put into practice but should be kept optional for a time being. This would help the people to understand what Uniform Civil Code is and how it can be beneficial for them. The other way is by bridging this gap of personal law through judicial decisions and simultaneous legislative amendments. This would help the people to slowly adopt the changes and not go through a sudden transformation. Another way can be to draft a Uniform Civil Code and open it for public scrutiny. This would assure the people that their views are taken into consideration while formulating the law for them. If they advise for any reasonable change, the changes can be adopted and this method will make them aware of the features and provisions that comes under common Civil Code.